

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 428 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

INDER TARACHAND SINDHI

Versus

STATE OF GUJARAT

Appearance:

Mr D M Thakker for M/S THAKKAR ASSOC. for Petitioner
Mr K G Sheth, APP for Respondent No. 1
RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/09/2000

CAV JUDGMENT

The petitioner has filed this petition under
Articles 226, 14 and 21 of the Constitution of India in

order to challenge the order of his externment dated 30.10.1999 passed by the Dy.Commissioner of Police, Ahmedabad City in exercise of the powers conferred on him by section 56(b) of the Bombay Police Act, 1951 as well as the order of the third respondent dated 28.1.2000 confirming the said order of the Dy. Commissioner of Police and dismissing the said appeal of the petitioner. As a result of these orders, the petitioner came to be externed out of the limits of the area of Ahmedabad Commissionerate, Ahmedabad rural area, Gandhinagar District, Kheda District and Mehsana District for a period of two years from the date of the initial order of the Dy.Commissioner of Police.

2. The petitioner states that he was served with show cause notice dated 3.5.1999 by the Asstt.Commissioner of Police and after the trial, the Dy. Commissioner of Police came to the decision that the petitioner should be externed out from the limits of the aforesaid area and hence the said order came to be passed on 30.10.1999. That, he also preferred an appeal before the third respondent under section 60 of the said Act which was dismissed on 28.1.2000. Feeling aggrieved by the said orders, the petitioner preferred this petition before this Court.

3. It has been mainly contended here that the show cause notice was issued by the Asstt.Commissioner of Police whereas the final order was passed by the Dy.Commissioner of Police and hence the original order is illegal. That the notice refers to the ground covered by section 56(b) of the said Act but the orders cover the grounds under section 56(a) as well as section 56(b) of the said Act and, therefore, there is non-application of mind. That the impugned order is not a speaking one. That, the show cause notice was not specific and it did not give particulars as to date, time and place as to the offending incidents considered by the externing authority. That, the offences registered and considered against the petitioner related to the period of 1998 whereas the actions commenced in 1999, showing unexplained inordinate delay in commencement of the proceedings. That these offences do not relate to chapters XVI and XVII of the Indian Penal Code, though section 56(b) of the said Act can be invoked only in cases of offences arising out of chapter XVI and XVII of the Indian Penal Code. That, it is not explained in the detention order as to why the petitioner has been externed out of limits of so many districts. That even the material part of the statements of witnesses relied upon by the detaining authority has not been supplied to

the petitioner and the said material has been considered by the detaining authority behind the back of the petitioner which is clearly in violation of the principles of natural justice. That, the detention order is therefore, illegal and deserves to be quashed and set aside.

4. It has, therefore, been prayed that this petition be allowed and the detention order against him passed by the Dy.Commissioner of Police and confirmed by the third respondent be quashed and set aside.

5. In this matter, Rule was issued. Mr K G Sheth, learned APP appears for the respondents. I have heard M/s.Thakkar & Sheth and have perused the papers.

6. Mr Thakker has argued on behalf of the petitioner that show cause notice dated 3.5.1999 at page 16 was issued by the Asstt. Commissioner of Police (ACP) and the externment order dated 30.10.1999 at page 20 has been issued by the Dy.Commissioner of Police (DCP) and hence the order in question by him is illegal. No explanation can be gathered from the records as to why the DCP exercised the powers under section 56 of the said Act when the proceedings were initiated by the ACP. Similar facts were also there in the case of Hussainmiya v. State of Gujarat reported in 1999 (2) GLH 786 and the externment order was quashed in that matter by this court since the notice was issued by the ACP and the ultimate order was issued by the DCP. Mr Sheth argues that the ACP is subordinate to the DCP. But he could not explain as to why the DCP passed the final order when the proceeding was initiated by the ACP. The impugned externment order therefore, cannot be sustained on this ground in view of the aforesaid decision of this Court coupled with the fact that the learned APP was not in a position to explain as to why the DCP decided the matter initiated by the ACP.

7. The learned Advocate for the petitioner has also argued that the notice covered the grounds of section 56(b) whereas the final order covers grounds under section 56(a) and 56(b) of the said Act. Notice at page 15 shows that it has been issued covering grounds mentioned in section 56(b) of the said Act which refers to the offences provided in chapter XII, XVI and XVII of the Indian Penal Code, 1860. There is no dispute regarding the same and even otherwise also, the facts can be gathered by a simple look at the grounds indicated at page 18. Then we can turn to the order of the DCP at page 20. This order contains grounds enumerated in

section 56(b) of the said Act referred to hereinabove. But thereafter the order further travels to say that the DCP was satisfied that the petitioner was a headstrong and dangerous person and his movement and act were causing or calculated to cause alarm, danger or harm to the persons or property. This aspect falls within section 56(a) of the said Act. The notice is silent with respect thereto. This means that the show cause notice has been restricted to section 56(b) of the said Act whereas the final order expands the scope and jurisdiction so as to include even the provision of section 56(a) of the said Act regarding which show cause notice is silent. So, the externing authority has considered a new point not finding place in the show cause notice. When the externing authority travels beyond the four corners of the show cause notice, his action takes away a valuable right of the petitioner to know what he is required to face. It is not shown if this additional ground was conveyed to the petitioner before the final order was passed. This would show that the impugned order of externment of the petitioner suffers from this additional infirmity of consideration to extraneous matters and hence it cannot be sustained as said in 1999(2) GLH 787 (supra).

8. It has then been argued that the impugned order is bad in law inasmuch as it is not a speaking order. The petitioner has examined 12 witnesses and they have not been referred in the orders of the detaining authority. Other evidence has also not been discussed. The impugned order only reproduces contents of notice without discussing evidence and material on record. Here the learned Advocate for the petitioner has relied upon a decision in the case of Balwantsingh v. Deputy Commissioner of Police, reported in 1999(1) GLH 207 which also says that mere reproduction of contents of notice and evidence is not enough. The third respondent has considered the evidence of the witnesses of the petitioner but will not solve the problem.

9. The detaining authority has stated in the order at page 20 that he had considered the materials placed before him. It was not necessary for him to disclose the names of witnesses. He could however, refer to the materials derived from the statements of witnesses not willing to disclose their names. The information or materials derived from the said witnesses has not conveyed to the petitioner and it has also not been disclosed and discussed in the order. This would violate the principles of natural justice and impugned order passed in violation of principles of natural justice

cannot be sustained.

10. It has also been argued that the petitioner has been illegally externed out of so many districts. Now, considering the availability of vehicles - both private and public service vehicles, it has become easy to have access of one district from another within a short time and hence there is nothing wrong if the externment extends to the surrounding districts also.

11. This shows that the impugned order suffers from several infirmities which shows that the principles of natural justice have not been observed. It further shows non-application of mind.

12. In the facts and circumstances of the case, the impugned order is not sustainable and hence it is required to be quashed. In the result, this petition is allowed and the impugned order of externment dated 30.10.1999 passed by the Dy.Commissioner of Police, Crime Branch, Ahmedabad City and the order dated 28.1.2000 of the third respondent confirming the said order of the DCP in externment appeal no.168/99 are ordered to be quashed and set aside.

Rule is accordingly made absolute.

8.9.2000 [D P Buch, J.]
msp.